

HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTEGON PREFERRED INSURANCE
COMPANY, a foreign corporation,

Plaintiff,

v.

DANIEL WILCOX and ELIZABETH
WILCOX, Washington residents; and ERIC
HOFF; a Washington resident,

Defendants.

NO. 2:21-cv-01501-BJR

**ORDER GRANTING
DEFENDANT/COUNTER-
CLAIMANTS/THIRD-PARTY
DEFENDANTS WILCOXES'
MOTION TO ENTER FINDINGS IN
SUPPORT OF RULE 54(b)
CERTIFICATION**

CLERK'S ACTION REQUIRED

DANIEL WILCOX and ELIZABETH
WILCOX, Washington residents,

Counterclaimants,

v.

INTEGON PREFERRED INSURANCE
COMPANY, a foreign corporation,

Counter-defendant.

ORDER GRANTING WILCOXES' MOTION TO
ENTER FINDINGS IN SUPPORT OF RULE 54(b) CERTIFICATION - 1

DANIEL WILCOX and ELIZABETH
WILCOX, Washington residents,

Third-Party Plaintiffs,

v.

ROBERT W. WARREN, ATTORNEY AT
LAW, PLLC, a Washington professional
limited liability company dba WRIXTON
LAW OFFICE; and SMITH FREED
EBERHARD, P.C., a foreign professional
services corporation,

Third-Party Defendants.

Currently before the Court is Defendants, Counterclaimants, and Third-Party Plaintiffs Daniel and Elizabeth Wilcoxes' ("the Wilcoxes") Motion to Enter Findings in Support of the Order Granting the Motion for Rule 54(b) Certification [Dkt. No. 167] ("the motion"). Having reviewed the motion, the record of the case, and the relevant legal authority, and no opposition to the motion being filed, the Court hereby rules as follows:

In support of its Order Granting Joint Motion to Stay Proceedings, Dkt. 166, the Court FINDS:

1. With respect to the Orders contained in (1) Order Granting Integon's Motion for Partial Summary Judgment on the Wilcoxes' Extra-Contractual Claims (8/3/2023), Dkt. 159; (2) Order Granting Integon's Motion for Partial Summary Judgment, (7/6/2023), Dkt. 149; and (3) Order Regarding the Wilcoxes' Motion for Partial Summary Judgment Against Smith Freed, Smith Freed's Motion for Summary Judgment Against the Wilcoxes, and Smith Freed's Motion to Exclude the Wilcoxes' Expert William Fuld (7/17/2023), Dkt. 153 ("dispositive orders"): The dispositive orders would be final in the sense that each such order is an ultimate disposition of an ORDER GRANTING WILCOXES' MOTION TO ENTER FINDINGS IN SUPPORT OF RULE 54(b) CERTIFICATION - 2

1 individual claim entered in the course of a multiple claims action, were it not for the presence of
2 the claims and parties involved in the unadjudicated remaining third-party claims asserted by
3 Wilcoxes against Warren; and there is no just reason for delay to appeal the dispositive orders.

4 2. The reasons for Rule 54(b) certification granted in the Order Granting Joint Motion to
5 Stay Proceedings, Dkt. 166, include:

6 a. The Wilcoxes seek to appeal the dispositive orders. Bases for appeal that
7 Wilcoxes intend to assert may include, but not be limited to: (1) that this Court engaged in
8 impermissible factfinding as a basis to dismiss the claims against Integon; for example, in
9 interpreting Elizabeth Wilcox's use of the word "lawsuit" when speaking to Integon, (2) this Court
10 erred in construing the meaning and scope of the "tender" requirement; (3) this Court erred in
11 ignoring or misconstruing the insurance contract language that required Integon to defend the
12 "claim" against Wilcox; not merely the "lawsuit"; and (4) this Court erred in excluding opinions
13 of the Wilcoxes' insurance claims handling expert.

14 b. No party opposes entry of this order.

15 c. The parties with live claims remaining, Daniel and Elizabeth Wilcox and Robert
16 W. Warren, Attorney at Law, PLLC, agree with this order.

17 d. No party will be prejudiced by an appeal of the dispositive orders prior to trial
18 of the remaining claims in this action.

19 e. Although the claims that are dismissed by the dispositive orders and the
20 unadjudicated remaining claims arise from some common facts, the legal theories asserted against
21 Integon and Warren differ. Here, the Wilcoxes' third-party claims against Integon are premised on
22 breach of contract, common law insurance bad faith, the Insurance Fair Conduct Act, and the
23 Washington Consumer Protection Act. Dkt. 22, pp. 22-23. These are related to the circumstances

24 ORDER GRANTING WILCOXES' MOTION TO
ENTER FINDINGS IN SUPPORT OF RULE 54(b) CERTIFICATION - 3

1 that gave rise to the allegations of legal malpractice but are sufficiently distinct from legal
2 malpractice claims to merit appellate review under these circumstances; particularly given the
3 parties' competing allegations of fault and causation.

4 f. Although claims that are the subject of the dispositive orders and the
5 unadjudicated remaining claims arise from some common facts and involve allegations of fault
6 and causation among the parties, *see* Dkt. 22, Dkt. 33 at pp. 12-13, Dkt. 30 at p. 13 & Dkt. 32 at
7 p. 9, such that all claims would best be tried together, this Court has no subject matter jurisdiction
8 over the unadjudicated remaining claims except as supplemental to the claims dismissed in the
9 dispositive orders, 28 U.S.C. § 1367.

10 g. If some or all of the dispositive orders are reversed, trial of the unadjudicated
11 claims will be significantly different than otherwise and could significantly affect the results of
12 trial of the unadjudicated claims. The parties relieved of claims by the dispositive orders, and the
13 parties to the unadjudicated remaining claims, have various claims and defenses based on the
14 conduct of other parties. At least some of those claims would need to be adjudicated if any of the
15 dispositive orders is reversed on appeal and could cause the outcome at trial to differ from that of
16 a trial solely on the unadjudicated remaining claims. Furthermore, it may be necessary for this
17 Court to apportion liability in accordance with *Tegman v. Accident & Medical Investigations*, 150
18 Wn.2d 102 (2003) and its progeny.

19 h. If this order were not entered, appeal of any or all dispositive motions were to
20 occur after trial of the remaining claims in this action, and the appeal were to reverse any of the
21 dispositive orders, then a significant risk exists that such a trial would become a waste of judicial
22 resources and impose an undue burden on the parties to that trial, and that the two trials would
23

24 ORDER GRANTING WILCOXES' MOTION TO
ENTER FINDINGS IN SUPPORT OF RULE 54(b) CERTIFICATION - 4

1 produce inconsistent results; and would thereby make the course of proceedings harsh and unjust
2 for the litigants involved in the first trial of the presently unadjudicated remaining claims.

3 i. The outcome of a trial on the remaining claims in this action would not likely
4 influence appellate consideration of the dispositive orders.

5 j. The costs and risks of multiplying the number of proceedings and of
6 overcrowding the appellate docket are outbalanced by pressing needs of the litigants for an early
7 and separate judgment as to the claims and parties involved in the dispositive orders.

8 k. The following order is in the best interests of efficient judicial administration.

9 The Court further FINDS that good cause exists to temporarily lift the stay imposed by this
10 Court, Dkt. 166, so that the Court may consider and decide the above-referenced motion, and that
11 to reimpose that stay upon entry of this Order is in the interests of justice.

12
13 **ACCORDINGLY, IT IS ORDERED** that:

14
15 A. The Motion to Enter Findings in Support of Order Granting Motion for Rule 54(b)
16 Certification, Dkt. No. 167, is GRANTED;

17 B. The stay entered by this Court, Dkt. 166, is LIFTED for purposes of consideration of
18 the Motion to Enter Findings in Support of Order Granting Motion for Rule 54(b) Certification,
19 Dkt. No. 167, and is REINSTATED, without further action of this Court, upon entry of this Order.

20 //

21 //

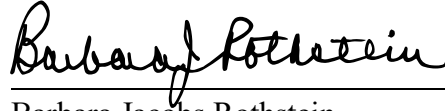
22 //

23 //

24 ORDER GRANTING WILCOXES' MOTION TO
ENTER FINDINGS IN SUPPORT OF RULE 54(b) CERTIFICATION - 5

The Clerk of the Court is directed to enter judgment forthwith as to the three orders identified in Dkt. 166.

DATED this 1st day of September, 2023.



Barbara Jacobs Rothstein
U.S. District Court Judge

Presented by:

STRITMATTER KESSLER KOEHLER MOORE

s/ Brad J. Moore

BRAD J. MOORE, WSBA #21802

s/ Daniel R. Laurence

DANIEL R. LAURENCE, WSBA #19697

s/ Shannon M. Kilpatrick

SHANNON M. KILPATRICK, WSBA #41495

brad@stritmatter.com

dan@stritmatter.com

shannon@stritmatter.com

Attorneys for Defendants/Counterclaimants/Third-Party Plaintiffs Wilcox

ORDER GRANTING WILCOXES' MOTION TO
ENTER FINDINGS IN SUPPORT OF RULE 54(b) CERTIFICATION - 6